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SW

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/904,183	07/12/2001	Cheryl Volkman	13012.SUS01	1161
23552	7590	11/10/2003	EXAMINER	
MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903			HARRIS, STEPHANIE N	
			ART UNIT	PAPER NUMBER
			3636	

DATE MAILED: 11/10/2003

2003

Please find below and/or attached an Office communication concerning this application or proceeding.

SW

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/904,183	VOLKMAN ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Stephanie N. Harris	3636	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 August 2003.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-13, 15-17, 19--47 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13, 15-17, 19--47 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 July 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All   b) ☐ Some \*   c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other:  |

## **DETAILED ACTION**

### ***Claim Objections***

Claim 24 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Accordingly, the claim 24 has not been further treated on the merits because it is unclear where it should depend from since it is dependent upon itself.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 7, 10, 23, 25, 26, 27, 29, 30, 34, 39, 40, 41, and 44 are rejected under 35 U.S.C. 102(b) as being anticipated by Downer (USPN 5112103).

Regarding claim 1, Downer discloses a stool is comprised of a seat (1), and a base (4) that has a front and back that corresponds to a front and back of the stool, respectively. The base is elongated from the back to the front along a longitudinal axis and because of its circular shape, it tapers from a first width at the back to a second, narrower width at the front. The base comprises a bottom surface with two opposite

sides with convex curvatures as seen in Figure 4. The opposite sides extend between the front and back end of the base.

The base (4) has a convex bottom surface that defines an upwards extending nose (5) at the front of the base as seen in Figure 7. A post or support structure (2) is connected to the seat (1) as seen in Figure 1. The opposite sides converge toward a nose located at the front of the base.

Regarding claim 26, a first contour, including convex portions on left and right sides of the post, extends across the width of the base. A second contour, including front and rear convex portions located forward and rearward of the post, extends across the width of the base

Regarding claims 2, 3 and 40, the base (4) includes a stabilization region (11), where the majority of the stabilization region is located rearward of the post (2) as seen in Figure 3.

Regarding claim 4, the stabilization region is a flattened region as seen in Figure 3.

Regarding claims 5 and 41, the concave top surface of the base (4) can be used as a storage compartment as seen in Figure 4.

Regarding claim 7, the base is elongated from the back to the front along a longitudinal axis, due to its circular shape. The base comprises a bottom surfacetwo opposite sides with convex curvatures as seen in Figure 7. The opposite sides extend between the front end and the back end of the base. The opposite sides converge

towards a nose (5), which can be located at the front end of the base as seen in Figure 7.

Regarding claim 8, the seat (1) has a front and back that corresponds to the front and back of the stool, respectively as seen in Figure 1. The first and second sides are adjacent to the front and back as seen in Figure 1. The seat is elongated from the first and second sides as seen in Figure 7. The seat is elongated transverse with respect to the longitudinal axis of the base.

Regarding claim 9, the seat (1) is contoured as seen in Figure 7.

Regarding claim 10, the nose (5) is rounded and extends upwardly as seen in Figure 4. The bottom surface of the base (4) at the nose further comprises discrete protrusions (6) as seen in Figure 1.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 19, 20, 21, 22, and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Downer (USPN 5112103) in view of Willingham (USPN 5887951).

Downer discloses a stool with a base (4), a seat (1), and a post (2) connecting the base and the seat as seen in Figure 1. The base has a front and back that

corresponds to the front and back of the stool. The base (4) comprises a top and bottom surface, where the top surface is concave as seen in Figure 4. The concave top surface of the base (4) can be used as a storage compartment as seen in Figure 4. Regarding claim 21, the seat is shaped so that a seated user's center of gravity can be positioned rearward of the post.

Downer shows all of the teachings of the claimed invention but fails to show the use of a base that tapers from a first width at the back to a second narrower width at the front.

Willingham discloses a base that tapers from a first width at the back to a second narrower width at the front as seen in Figure 2a. The base has a convex bottom surface that defines an upward extending nose (30) at the front of the base as seen in Figures 1 and 2a. The base has a stabilization region, which is a flattened region that is located by element x1 in Figure 3a that can be placed rearward of the post. The base comprises two opposite sides with convex curvatures as seen in Figure 1. Regarding claim 7, the opposite sides extend between the front end and the back end of the base, converging towards a nose (30) located at the front end of the base as seen in Figure 2a.

Regarding claim 10, the nose is rounded and extends upwardly as seen in Figure 2a.

Regarding claim 19, the base has a first contour that can be located forward of the post. The first contour (24) has a first convex curvature in a direction transverse to the longitudinal axis for allowing side-to-side pivoting. The base includes a second contour (16) that extending a direction along the longitudinal axis for allowing front to back pivoting. The stabilization region can be configured to stabilize the stool by limiting

side-to-side pivoting when the stool is upright without interfering with front to back pivoting and without limiting side-to-side pivoting when the stool is pivoted forwardly.

Claims 6, 42, 43, and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Downer (USPN 5112103) in view of Ferguson (USPN 6062638).

Downer has been described above. Downer shows all of the teachings of the claimed invention but fails to show the use of a post that is adjustable in height. Ferguson discloses a post (22) that is adjustable in height (Abstract). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the post of Downer in view of Willingham by replacing it with the height adjustable post, as shown by Ferguson, in order to allow the occupant of the stool to choose the height adjustment.

Claims 8, 9, and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Downer in view of Pagano et al. (USPN 5337427).

Downer has been described above. Downer in view of Willingham shows all of the teachings of the claimed invention but fails to show the use of an elongated, contoured seat with handles.

Pagano et al. discloses a seat 20 that has a front and back that can correspond to the front and back of the stool. First and second sides are adjacent to the front and back. The seat is elongated from the first and second sides and can be transverse with respect to a longitudinal axis of a base as seen in Figure 2. Handles (38) are positioned

at the first and second sides of the seat as seen in Figure 2. The seat is contoured as seen in Figure 3. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the seat of Downer by replacing it with the elongated, contoured seat with handles, as shown by Pagano et al., in order to assist with positioning and stabilizing.

Claims 11, 12, 31, and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Downer in view of Sherman (USPN 5891546).

Downer in view of Willingham and have been described above. Downer in view of Willingham and shows all of the teachings of the claimed invention but fails to show the base bottom surface being comprised of a non-slip surface. Sherman discloses a non-slip surface with protrusions that can be used (Col. 4, lines 33-39). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the base bottom surface of Downer in view of Willingham and Sherman by applying the non slip surface, as shown by Sherman, in order to help prevent the stool from slipping.

Claims 13 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Downer in view of Hoover et al. (USPN 1976170)

Downer in view of Willingham has been described above. Downer in view of Willingham shows all of the teachings of the claimed invention but fails to show the use of base with a hole. Hoover et al. discloses a base (1) that has a hole (5), which could be used to hang the base as seen in Figure 3. It would have been obvious to one of



ordinary skill in the art at the time of the invention to modify the base of Downer in view of Willingham by replacing it with the base with a hole, as shown by Hoover et al., in order to additionally provide a hand holder for the base.

Claims 19-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Downer in view of Haynes (USPN 5112103).

Regarding claim 21, the seat (1), as disclosed by Downer is shaped so that a user's selected sitting position can place the user's center of gravity to be positioned rearward of the post (2).

Regarding claim 19, Downer shows all of the teachings of the claimed invention but fails to show a base that can pivot side to side.

Haynes discloses a base (20) that includes a first contour located forward of a post (22). Due to its circular shape, the first contour has a first convex curvature in a direction transverse to the longitudinal axis for allowing side to side pivoting as seen in Figure 1. The base, inherently includes a second contour extending in a direction along the longitudinal axis for allowing front to back pivoting as seen in Figure 1.

A stabilization region (21), as seen in Figure 3, can be configured to stabilize the stool by limiting side to side pivoting when the stool is upright without interfering with front to back pivoting and without limiting side to side pivoting when the stool is pivoted forwardly.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the base of Downer, by replacing it with the bottom surface of the base, shown by Haynes, in order to provide rocking motion for the base.

Claims 15, 17, 36, 38, and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Downer (USPN 5112103) in view of Willingham and Haynes.

Downer in view of Willingham and Haynes discloses all of the claimed structure of the instant invention. Downer lacks only the specifically recited method steps.

It would have been obvious, if not inherent, to one having ordinary skill in the pertinent art at the time of the invention to use the stool of Downer in view of Willingham and Haynes by the claimed method steps. Such a modification provides a conventional and efficient method of using the device of Downer in view of Willingham and Haynes.

Claims 16, 37, and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Downer in view of Willingham and Haynes and Sherman.

Regarding claims 15-17, Downer in view of Willingham and Haynes and Sherman discloses all of the claimed structure of the instant invention. Downer in view of Willingham and Haynes and Sherman lacks only the specifically recited method steps.

It would have been obvious, if not inherent, to one having ordinary skill in the pertinent art at the time of the invention to use the stool of Downer in view of Willingham and Haynes and Sherman by the claimed method steps. Such a modification provides a

conventional and efficient method of using the device of Downer in view of Willingham and Haynes and Sherman.

### ***Response to Arguments***

Applicant's arguments filed 8/13/03 have been fully considered but they are not persuasive.

In response to Applicant's argument that Downer does not disclose an elongated base the examiner respectfully disagrees. The fact that the base of Downer is round does not mean that it is not elongated. Downer also discloses an upwardly extending nose (5) as seen in Figure 4.

In response to Applicant's argument that Willingham does not teach or suggest the seat being attached to a post and a base, Applicant is reminded that Willingham was used to show the structural shape of a base. The shape of the base of Downer was modified with the shape of the base of Willingham.

In response to Applicant's argument that Haynes does not teach or suggest the seat being attached to a post and a base, Applicant is reminded that Haynes was used to show the structural shape of a base. The shape of the base of Downer was modified with the shape of the base of Haynes.

In response to Applicant's argument that Haynes does not disclose an elongated base the examiner respectfully disagrees. The fact that the base of Haynes is round does not mean that it is not elongated. Haynes does disclose a convex and flattened region, as recited in the above rejection and as seen in Figure 1.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

In response to applicant's argument that the examiner has combined an excessive number of references, reliance on a large number of references in a rejection does not, without more, weigh against the obviousness of the claimed invention. See *In re Gorman*, 933 F.2d 982, 18 USPQ2d 1885 (Fed. Cir. 1991).

Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following patents are cited to further show the state of the art with respect to gardening stools: U.S. Pat. No. 5733011 to Young et al.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephanie N. Harris whose telephone number is 703-305-1838. The examiner can normally be reached on Monday-Friday from 9am to 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Cuomo, can be reached on (703) 308-0827. The fax phone number for the organization where this application or proceeding is assigned is 703-305-7687.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

October 30, 2003

SNH

  
Peter M. Cuomo  
Supervisory Patent Examiner  
Technology Center 3600